

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.

)

Docket No. ER13-535-000

**MOTION FOR LEAVE TO ANSWER AND
ANSWER OF THE PJM POWER PROVIDERS GROUP**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission” or “FERC”),¹ the PJM Power Providers Group (“P3”)² respectfully moves for leave to answer³ and answers in support generally of the Comments of the Pennsylvania Public Utility Commission⁴ (“PA PUC”) and certain aspects of Comments of the Public Utilities Commission of Ohio⁵ (“Ohio Commission”), and in opposition

¹18 C.F.R. §§ 385.212, 385.213 (2012).

² P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly designed and well-functioning electricity markets in the PJM Interconnection, L.L.C. (“PJM”) region. Combined, P3 members own over 87,000 MW of generation assets and over 51,000 miles of electric transmission lines in the PJM region, serve nearly 12.2 million customers, and employ over 55,000 people in the PJM region, representing 13 states and the District of Columbia. The comments contained in this filing represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue. For more information on P3, visit www.p3powergroup.com.

³ Although the Commission’s procedural rules do not provide for answers to protests as a matter of right, the Commission regularly allows answers where, as here, the answer provides further explanation or otherwise helps ensure a full and complete record. *See, e.g., PJM Interconnection, L.L.C., et al.*, 104 FERC ¶ 61,154 at P 14 (2003), *on reh’g*, 109 FERC ¶ 61,236 (2004); *Williams Energy Mktg. & Trading Co. v. Southern Co. Servs., Inc.*, 104 FERC ¶ 61,141 at P 10 (2003); *Ameren Servs. Co.*, 100 FERC ¶ 61,135 at P 15 (2002), *on reh’g*, 103 FERC ¶ 61,178 (2003).

⁴ *PJM Interconnection, L.L.C.*, Comments of the Pennsylvania Public Utility Commission, Docket No. ER13-535-000 (filed December 28, 2012) (the “PA PUC Comments”).

⁵ *PJM Interconnection, L.L.C.*, Comments Submitted on Behalf of the Public Utilities Commission of Ohio, Docket No. ER13-535-000 (filed December 28, 2012) (the “Ohio Commission Comments”). While P3 supports much of the Ohio Commission Comments, it does not agree with the Ohio Commission’s proposal that a state sponsored generation solicitation

to the Comments of the Independent Market Monitor for PJM⁶ (“IMM”), and the Protests of the Maryland Public Service Commission⁷ (“MD PSC”) and the New Jersey Board of Public Utilities⁸ (“NJ BPU”), and the Comments of the Illinois Commerce Commission⁹ (Illinois Commission) with regard to the PJM Interconnection, L.L.C. (“PJM”) December 7, 2012 filing¹⁰ in the above-captioned proceeding.¹¹

ANSWER

I. The IMM’s last minute alternative that would allow states to engage in discriminatory procurements is not just and reasonable and is not necessary.

In its comments, the IMM suggests two additional modifications to the competitive, nondiscriminatory procurement processes that should be rejected by the Commission.¹² In an effort to address concerns that were raised by some, but certainly not all states, the IMM fundamentally alters the PJM proposal in a manner that is inconsistent with the overall settlement and would be an unfortunate step backward in the effort to free PJM from the

limited to only new facilities can receive a Competitive Entry Exemption (*id.* at 4-5) or with its positions with regard to cogeneration facilities. *Id.* at 9-12.

⁶ *PJM Interconnection, L.L.C.*, Comments of the Independent Market Monitor for PJM, Docket No. ER13-535-000 (filed December 28, 2012) (the “IMM Comments”).

⁷ *PJM Interconnection, L.L.C.*, Notice of Intervention and Protest of the Maryland Public Service Commission, Docket No. ER13-535-000 (filed December 28, 2012) (the “MD PSC Protest”).

⁸ *PJM Interconnection, L.L.C.*, Motion to Intervene and Protest of the New Jersey Board of Public Utilities, Docket No. ER13-535-000 (filed December 28, 2012) (the “NJ BPU Protest”).

⁹ *PJM Interconnection, L.L.C.*, Motion to File Comments Out of Time and Comments of the Illinois Commerce Commission, Docket No. ER13-535-000 (filed January 9, 2013) (the “Illinois Commission Comments”).

¹⁰ *PJM Interconnection, L.L.C.*, Docket No. ER13-535-000 (filed December 7, 2012) (the “December 7 Filing”).

¹¹ P3 does not attempt in this answer to address all of the comments and protests opposing the December 7 Filing, but is instead focusing on certain key points. P3’s silence with respect to other assertions and arguments made by commenters and protestors opposing the December 7 Filing should not be construed as meaning that P3 agrees with such assertions and arguments.

¹² IMM Comments at 10-11.

harms of price suppression. The IMM's proposal would enable the very behavior that the MOPR is intended to prevent and is, therefore, not just or reasonable.

As a preliminary matter, P3 notes that the IMM's proposal is unnecessary. Unlike other RTO's, PJM, because of RPM, enjoys a relatively robust reliability prognosis. In the last auction alone, PJM secured over 164,000 MWs of capacity which included a 20% reserve margin at prices in the vast majority of the footprint, below the cost of a new power plant.¹³ Beyond the capacity that cleared the auction, approximately 5,000 MWs of additional capacity was offered into the market that did not clear.¹⁴ In addition, the PJM generator queue has over 75,000 MWs of new capacity moving through the queue process.¹⁵ All of this suggests that reliability will be maintained for decades. Further, while local reliability issues may appear from time to time, PJM has demonstrated an ability to address local issues through the effective use of their current tools. The suggestion made by the MD PSC that their state faces a "reliability challenge"¹⁶ is simply false and does not square with reality or the record before this Commission. The value in PJM's RPM market is that reliability is a function of the system as a whole (including any local area constraints) and is not a function of generation resources within any particular state's political boundary.

Even if a "reliability challenge" existed in PJM, which is not supported in the record, PJM has many tools to address such a problem. Among other actions, PJM could call for

¹³ <http://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/20120518-2015-16-base-residual-auction-report.ashx>. Note that the 2015/2016 BRA was able to maintain these robust reserve margin in an auction that also saw the likely retirement of 14,000 MW's of older coal capacity.

¹⁴ See <http://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/20120518-2015-16-base-residual-auction-report.ashx>

¹⁵ See <http://www.pjm.com/planning/generation-interconnection/generation-queue-active.aspx>

¹⁶ MD PSC Protest at 28.

additional capacity in an incremental auction, PJM could pursue a transmission upgrade that could alleviate the need for new generation, PJM could enter into a “Reliability Must Run” or RMR contract to keep a specific unit online for a transition period until a permanent solution was implemented, or PJM could conduct a Reliability Backstop Auction to competitively procure additional resources as needed for up to fifteen years.

If the PJM proposal is approved by this Commission, states will have tools to address capacity issues within their borders. Nothing contained in the proposed MOPR prevents a state from ordering a utility to build a new power plant (renewable or otherwise), requiring a utility to procure enough capacity to meet the needs of their load or otherwise promoting reliability beyond the needs identified by PJM. The PJM proposal provides a clear path for a state to procure capacity within the RPM process through the use of competitive, non-discriminatory auctions. So long as a state does not mandate the construction or clearing of the new resource which would have the benefit of out-of-market revenues not available to others, then the resource obtained in a competitive and non-discriminatory auction may avail itself of a competitive entry exemption and participate in the RPM auction free of the MOPR.

The Commission should not allow the IMM to disrupt a “compromise” that was agreed to by 89% of the PJM stakeholder body, as well as several state commissions, with an alteration that was never discussed in the five stakeholder meetings or two education sessions, and that is out of time and meritless. While P3 appreciates the effort to find a common ground on a contentious issue, the time to float ideas and invite feedback was in the stakeholder process. Ideas such as this one should not be evaluated for the first time in a FERC filing.

Substantively, the IMM seeks to replace a relatively streamlined and objective process that is presented in the PJM proposal with a series of subjective determinations that would allow a state to engage in a discriminatory procurement of capacity. A principal tenet of the PJM proposal is to subject discriminatory procurements of capacity to the MOPR, and the IMM's suggestion runs counter to this principal.¹⁷ As troubling is the discriminatory nature of the IMM's proposal and the inherent ambiguity in it, the IMM would reintroduce the unit specific review process - the elimination of which is a central tenant of the PJM proposal.¹⁸ Under the IMM's proposal a state could declare that a reliability issue exists, even if PJM believes that one does not, issue a discriminatory RFP and subject those units to a unit specific review process led by PJM and the IMM. In other words, the fundamental aspect of the current MOPR that led to so many concerns in the May 2012 auction would be allowed to continue under the IMM's proposal. There is no reason for this Commission to go back down this path that 89% of the PJM stakeholders agree is not in the best interest of PJM's market.

¹⁷ The Commission should similarly reject the proposal of the Ohio Commission to allow states to engage in discriminatory procurements. Ohio Comments at 4-5.

¹⁸ Other parties through their comments seek to reintroduce the problematic unit specific review process. *See e.g., PJM Interconnection, L.L.C., Protest of CPV Power Development, Inc*, Docket No. ER13-535-000 (filed December 28, 2012). at 11-14; *PJM Interconnection, L.L.C., Motion to Intervene and Protest of Hess Corporation, Hess Newark LLC and Hess NEC LLC*, Docket No. ER13-535-000 (filed December 28, 2012) at 9-18; Maryland PSC Protest at 1-3; Illinois Commission Comments at 7-8. The Commission should similarly reject these suggestions as the unit specific exemption has been shown to be non-workable in PJM. Also among these suggestions that should be rejected is NRG's suggestion for a separate Net CONE calculation for repowering projects. *See PJM Interconnection, L.L.C., Protest of NRG Companies and Motion for Leave to File Out of Time*, Docket No. ER13-535-000 (filed December 31, 2012) at 17-19. *See also PJM Interconnection, L.L.C., Answer of PJM Interconnection, L.L.C. to Comments and Protests*, Docket No. ER13-535-000 (filed January 8, 2013) at 16-18.

II. **The proposed competitive entry exemption is not discriminatory.**

The MD PSC contends that the competitive entry exemption is “specifically designed to exclude state-initiated projects,”¹⁹ that the proposed rules “only affect states like Maryland that have opted for competitive retail energy markets,”²⁰ and that the “rules are undeniably unduly discriminatory and specifically disadvantage states that have committed to electric supply restructuring and retail choice.”²¹ The NJ BPU makes similar arguments,²² and the Illinois Commission agrees with MD PSC and NJ BPU.²³ Despite these contentions however, the similarly situated retail choice states of Pennsylvania and Ohio generally support the PJM proposal and do not claim discrimination.

The PJM proposed competitive entry exemption is extremely complementary to efforts to advance competitive retail markets at the state level. RPM provides a transparent price signal to all capacity resources. Generation, demand response and energy efficiency all compete to determine who will provide that capacity at the lowest price. The integrity of a competitive wholesale capacity market to provide the resources necessary to support a competitive retail market demands market signals that reflect the true market price of that capacity. Freeing the capacity market from the impacts of price suppression caused by uneconomic entrants which distorts prices enhances state retail competition – not undermines it, as suggested by the MD PSC and NJ BPU.

Further, the competitive entry exemption does not target state-initiated procurements, as the MD PSC suggests. In fact, as the PA PUC points out “[s]tate sponsored generation can also

¹⁹ MD PSC Protest at 13.

²⁰ MD PSC Protest at 20.

²¹ *Id.*

²² NJ BPU Protest at 8, 32-34.

²³ Illinois Commission Comments at 13-14.

receive an exemption if the generation project is selected in a competitive and non-discriminatory state procurement process that is open to both new and existing capacity.”²⁴ Also, the Ohio Commission, although suggesting certain modification to PJM’s proposal, notes that the competitive entry exemption is “reasonable”.²⁵

The PA PUC supports the competitive entry exemption and specifically states that it agrees with PJM that the proposal “provides a roadmap for any state that is interested in a capacity procurement process to structure that process in a way that ensures that MOPR will not adversely affect that procurement.”²⁶ The PA PUC goes on to state that it supports PJM’s explanation “that the proposal provides the states with opportunities to decide what type of generation to procure as well as various opportunities to procure generation in a manner that insulates the rest of the market from any adverse price suppression effects in the FERC-jurisdictional wholesale market.”²⁷

In short, the competitive entry is not discriminatory against either retail states or state initiated procurements, and arguments suggesting that it is, should be dismissed. As demonstrated by comments by the PA PUC, the Ohio Commission and other comments before this Commission, RPM and the PJM’s revised MOPR proposal are complementary to state led efforts to establish retail markets and do not interfere with a myriad of tools available to state utility commissions to address resource adequacy responsibilities.

²⁴ PA PUC Comments at 6.

²⁵ Ohio Commission Comments at 6.

²⁶ PA PUC Comments at 9-10.

²⁷ PA PUC Comments at 10.

III. New entry into the PJM market that qualifies for the competitive entry exemption should not be mitigated.

NRG suggests that a price floor be set for any new entry to the market even if that new entry does not receive a discriminatory out of market payment.²⁸ P3 disagrees. NRG has neither shown that PJM's proposal is unjust or unreasonable or that its proposal is a just and reasonable replacement. Entry that is truly competitive should be allowed to enter the market at any price level it chooses as long as that entry is "truly competitive." The competitive entry exemption as presented in the PJM proposal provides an effective screen against market entry that could lead to inappropriate price suppression and does not need to be bound by either a floor or a cap.

Economic theory suggests that a market participant's action is the best indicator of expected profitability – provided that the market participant is playing on a level playing field based on fair and balanced rules with other market participants. Developing a new gas-fired project is a considerable investment that is only made after careful forethought. Developers have a strong incentive to make a profit, and if a truly competitive entrant wants to bid at some fraction of net CONE and has the capital to make the investment, it is usually because the developer believes that the project will benefit that developer's economic interest. If a market participant is wrong about its assumptions or expectations, the market will discipline the participant's actions and over time participants who make poor decisions will not be in the market. Ideally, market discipline and not arbitrary bid floors is the most effective and efficient means of handling what may be viewed as irrational market entry.

A competitive entrant that is not receiving discriminatory out-of-market payments should not be precluded from bidding in a manner that is reflective of that entrant's view of the market.

²⁸ NRG Protest at 15-17.

However, a market participant whose view of the market is seen through the rose colored glasses of a state subsidy cannot be expected to act in an economically rational manner. Mitigation is appropriate for such a market participant.

CONCLUSION

WHEREFORE, for the foregoing reasons, P3 respectfully requests that the Commission (1) grant P3's motion for leave to answer; and (2) consider this answer in formulating its Order on the PJM's December 7 Filing.

Respectfully submitted,

On behalf of the PJM Power Providers Group

By: /s/ Glen Thomas
Glen Thomas
GT Power Group
1060 First Avenue, Suite 400
King of Prussia, PA 19406
gthomas@gtpowergroup.com
610-768-8080

Dated: January 14, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington DC, this 14th day of January, 2013.

On behalf of the PJM Power Providers Group

By: /s/ Glen Thomas_____

Glen Thomas
GT Power Group
1060 First Avenue, Suite 400
King of Prussia, PA 19406
gthomas@gtpowergroup.com
610-768-8080